

AMENDED IN ASSEMBLY MAY 9, 2013

AMENDED IN ASSEMBLY APRIL 23, 2013

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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 609

Introduced by Assembly Member Nestande
(Coauthors: Assembly Members Beth Gaines, Maienschein,
and Olsen, and Skinner)

February 20, 2013

An act to add Chapter 2.5 (commencing with Section 13989) to Part 4.5 of Division 3 of Title 2 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

AB 609, as amended, Nestande. State-funded research.

Existing law authorizes the Department of General Services to carry out various powers and duties relating to assisting a state agency in the management and development of intellectual property developed by state employees or with state funding, including, among other duties, developing a database of state-owned intellectual property using specified data.

Existing law authorizes state agencies and departments to, upon request, share records and information related to intellectual property generated by state employees or with state funding with the department. Existing law also imposes certain restrictions on employees and former employees of the department with respect to divulging certain information provided by state agencies and departments regarding intellectual property.

~~This bill would enact the California Taxpayer Access to Publicly Funded Research Act. The bill, notwithstanding any other law, would require a state agency that provides grant funding resulting directly in research for the purpose of specific research undertakings to develop a public access policy. The bill would require the public access policy to, among other things, include a requirement that electronic versions of final manuscripts or a specified link to an electronic version of original research papers accepted for publication be submitted to the state agency and the California State Library, and to provide free online public access to those final peer-reviewed manuscripts or published versions, as specified. would establish minimum publication requirements for a person receiving funding, in whole or in part, in the form of a research grant from a state agency. The bill would require the grant recipient to provide for public access to any publication of a state agency-funded invention or state agency-funded technology, as specified, including ensuring that an electronic version of the final peer-reviewed manuscript is submitted to the funding agency or to an appropriate publicly accessible database approved by the agency, and is made publicly available no later than 12 months after the official date of publication.~~

~~This bill would, until January 1, 2018, require, not later than December 1, that each state agency submit an annual report on the state agency's public access policy to the Governor, the Senate Committee on Rules, and the Speaker of the Assembly.~~

~~The bill would make legislative findings in support of granting public access to state-funded research and inventions. The bill would also express the intent of the Legislature to encourage all grantees to abide by the publication requirements outlined in the California Code of Regulations for stem cell research California Institute for Regeneration Medicine grants, as specified. The bill would exempt a grantee that receives funding from an agency that has an existing publication requirement that meets or exceeds the requirements of this bill.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.~~

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 2.5 (commencing with Section 13989)
- 2 is added to Part 4.5 of Division 3 of Title 2 of the Government
- 3 Code, to read:

CHAPTER 2.5. STATE-FUNDED RESEARCH

13989. This act shall be known and may be cited as the California Taxpayer Access to Publicly Funded Research Act.

13989.2. For purposes of this chapter, the following definitions shall apply:

(a) “State” “state agency” shall mean an entity within the executive branch, including, but not limited to, all departments, boards, bureaus, commissions, councils, and offices. Neither the University of California, nor the California State University, is included in the definition of state agency.

(b) “Direct research” shall mean research resulting directly from grants from state agency funding for the purpose of specific research undertakings.

(c) “Policy” shall mean the public access policy established pursuant to Section 13989.4.

13989.4. (a) Notwithstanding any other law, each state agency that provides funding in the form of a research grant to a grantee for direct research shall develop a public access policy that shall do the following:

(1) Include a requirement that electronic versions of the author’s final manuscripts, or a link to an electronic version of the author’s final manuscript in an open access digital repository of original research papers that have been accepted for publication in peer-reviewed journals and result from research supported from state agency funding, be submitted to the funding state agency and the California State Library.

(2) Provide free online public access to such final peer-reviewed manuscripts or published versions as soon as practicable, but not later than 12 months after publication in peer-reviewed journals.

(3) To the extent in compliance with copyright or patent protection, produce an online bibliography of all research papers that are publicly accessible under the policy, with each entry linked to the corresponding free online full text. The California State Library shall produce and maintain the online bibliography under this paragraph.

(4) Provide for the long-term preservation of, and free access to, published research findings in a stable digital repository maintained by the California State Library or in any repository determined by the California State Library to meet these conditions.

~~(5) Be developed in conjunction with any other state agencies that provide funding for direct research or that underwrite the cost of facilities, equipment, hardware, information resources, personnel, or otherwise fiscally support direct research.~~

~~(6) Authorize the use of grant money for publication costs, which include fees charged by a publisher, including, but not limited to, color and page charges, or fees for digital distribution.~~

~~(b) The policy described in subdivision (a) shall exclude all of the following:~~

~~(1) Research progress reports presented at professional meetings or conferences.~~

~~(2) Laboratory notes, preliminary data analyses, notes of the author, phone logs, or other information used to produce the final manuscript.~~

~~(3) Classified research, research resulting in works that generate revenue or royalties for the authors, or patentable discoveries, to the extent necessary to comply with copyright or patent protections.~~

~~(4) Authors who do not submit their work to a peer-reviewed journal or works that are rejected for publication in such journals.~~

~~(5) State-funded research grants entered into pursuant to a contract prior to the effective date of this chapter where the terms and conditions of that contract prohibit the public dissemination of the research or are otherwise in conflict with the provisions of this chapter.~~

~~(6) Any data, including supplemental data, that has the potential to reveal a person's identity.~~

13989.4. The Legislature finds and declares the following:

(a) The state is home to many of the world's top research universities, national laboratories, and leading-edge high-technology companies that generate significant intellectual property.

(b) It is in the interest of the state to ensure that the results of state-funded research are promptly developed and protected and to ensure free public Internet access to the results, where appropriate.

(c) The expansion of innovation with the investment of taxpayer dollars in the form of publicly funded grants could generate public benefit, including, but not limited to, reinvestment in research, development of new innovations, and jobs created from these types of research.

1 ~~(d) It is the intent of the Legislature that any grantee who~~
2 ~~receives funding in the form of a research grant from a state agency~~
3 ~~abide by the publication requirements outlined in subdivisions (a)~~
4 ~~to (d), inclusive, of Section 100303 of Title 17 of the California~~
5 ~~Code of Regulations, as amended on March 21, 2013, and in effect~~
6 ~~on July 1, 2013.~~

7 ~~13989.6. (a) Not later than December 1, annually, each state~~
8 ~~agency shall submit a report on the state agency's policy to the~~
9 ~~Governor, the Senate Committee on Rules, and the Speaker of the~~
10 ~~Assembly.~~

11 ~~(b) The report shall include, but not be limited to, all of the~~
12 ~~following:~~

13 ~~(1) A statement of the effectiveness of the policy in providing~~
14 ~~the public with free online access to papers on research funded by~~
15 ~~the state agency.~~

16 ~~(2) A list of papers published in peer-reviewed journals that~~
17 ~~report on research funded by the state agency.~~

18 ~~(3) A corresponding list of papers made available by the state~~
19 ~~agency as a result of this act.~~

20 ~~(c) (1) A report to the Legislature pursuant to this section shall~~
21 ~~be submitted in compliance with Section 9795.~~

22 ~~(2) This section shall become inoperative on January 1, 2018,~~
23 ~~pursuant to Section 10231.5.~~

24 13989.6. (a) Any grantee that receives funding, in whole or
25 in part, in the form of a research grant from a state agency shall
26 provide for free public access to any publication of a state
27 agency-funded invention or state agency-funded technology, as
28 provided in this section.

29 (b) For any manuscript that is peer reviewed and accepted for
30 publication in a scientific journal, the grantee shall ensure that
31 an electronic version of the final peer-reviewed manuscript is
32 submitted to the funding agency or to an appropriate publicly
33 accessible database approved by the agency, including, but not
34 limited to, the California Digital Library, PubMed Central, or the
35 California Digital Open Source Library, to be made publicly
36 available no later than 12 months after the official date of
37 publication. Manuscripts submitted to the California Digital Open
38 Source Library shall be exempt from the requirements in
39 subdivision (b) of Section 66408 of the Education Code. The
40 grantee shall make reasonable efforts to comply with this

1 *requirement through submission of the manuscript to an approved*
2 *publicly accessible database, including notifying the funding*
3 *agency of submission. If the grantee is unable to submit the*
4 *manuscript to an approved publicly accessible database, the*
5 *grantee may comply by providing the manuscript to the funding*
6 *agency, no later than 12 months after the official date of*
7 *publication. In lieu of the final peer-reviewed manuscript, the*
8 *grantee may submit the final published article.*

9 *(c) For publications other than those described in subdivision*
10 *(b), including meeting abstracts, the grantee shall comply by*
11 *providing the manuscript to the funding agency no later than 12*
12 *months after the official date of publication.*

13 *(d) Grantees are responsible for ensuring that any publishing*
14 *or copyright agreements concerning submitted articles fully comply*
15 *with this section.*

16 *(e) Grantees are authorized to use grant money for publication*
17 *costs, including fees charged by a publisher for color and page*
18 *charges, or fees for digital distribution.*

19 *(f) This chapter shall not apply to a grantee that receives funding*
20 *from a state agency or funding agency that has an existing*
21 *publication requirement that meets or exceeds the requirements*
22 *of this section, on or before the effective date of this chapter.*